

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 629

Introduced by Senator Mitchell

February 27, 2015

An act to amend Section ~~832.5~~ of 405a of, and to repeal Section 405b of, the Penal Code, relating to ~~peace officers: crimes.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 629, as amended, Mitchell. ~~Peace officers: complaints. Crimes: taking person from lawful custody of peace officer.~~

Existing law defines a "lynching" as the taking of a person from the lawful custody of a peace officer by means of a riot. Under existing law a person who participates in a lynching is punishable by imprisonment in a county jail for 2, 3, or 4 years.

This bill would provide that the taking of a person from the lawful custody of a peace officer is no longer defined as a "lynching." This bill would provide that a person who participates in the taking of another person from the lawful custody of a peace officer is guilty of a felony, punishable by imprisonment in a county jail for 2, 3, or 4 years.

~~Existing law requires a department or agency that employs peace officers or custodial officers to establish a procedure to investigate complaints by members of the public against those officers. Existing law establishes retention requirements and access privileges, as specified, for those complaints and related reports or findings.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 405a of the Penal Code is amended to*
2 *read:*

3 405a. ~~The~~ *A person who participates in the taking by means*
4 *of a riot of any another person from the lawful custody of any a*
5 *peace officer is a lynching; guilty of a felony, punishable by*
6 *imprisonment pursuant to subdivision (h) of Section 1170 for two,*
7 *three, or four years.*

8 *SEC. 2. Section 405b of the Penal Code is repealed.*

9 ~~405b. Every person who participates in any lynching is~~
10 ~~punishable by imprisonment pursuant to subdivision (h) of Section~~
11 ~~1170 for two, three or four years.~~

12 ~~SECTION 1. Section 832.5 of the Penal Code is amended to~~
13 ~~read:~~

14 ~~832.5. (a) (1) A department or agency in this state that~~
15 ~~employs peace officers shall establish a procedure to investigate~~
16 ~~complaints by members of the public against the personnel of those~~
17 ~~departments or agencies, and shall make a written description of~~
18 ~~the procedure available to the public.~~

19 ~~(2) A department or agency that employs custodial officers, as~~
20 ~~defined in Section 831.5, may establish a procedure to investigate~~
21 ~~complaints by members of the public against those custodial~~
22 ~~officers employed by these departments or agencies, provided~~
23 ~~however, that any procedure so established shall comply with the~~
24 ~~provisions of this section and with the provisions of Section 832.7.~~

25 ~~(b) Complaints and any reports or findings relating to these~~
26 ~~complaints shall be retained for a period of at least five years. All~~
27 ~~complaints retained pursuant to this subdivision may be maintained~~
28 ~~either in the peace officer's or custodial officer's general personnel~~
29 ~~file or in a separate file designated by the department or agency~~
30 ~~as provided by department or agency policy, in accordance with~~
31 ~~all applicable requirements of law. However, prior to any official~~
32 ~~determination regarding promotion, transfer, or disciplinary action~~
33 ~~by an officer's employing department or agency, the complaints~~
34 ~~described by subdivision (c) shall be removed from the officer's~~
35 ~~general personnel file and placed in separate file designated by the~~
36 ~~department or agency, in accordance with all applicable~~
37 ~~requirements of law.~~

1 ~~(e) Complaints by members of the public that are determined~~
2 ~~by the peace officer's or custodial officer's employing agency to~~
3 ~~be frivolous, as defined in Section 128.5 of the Code of Civil~~
4 ~~Procedure, or unfounded or exonerated, or any portion of a~~
5 ~~complaint that is determined to be frivolous, unfounded, or~~
6 ~~exonerated, shall not be maintained in that officer's general~~
7 ~~personnel file. However, these complaints shall be retained in~~
8 ~~other, separate files that shall be deemed personnel records for~~
9 ~~purposes of the California Public Records Act (Chapter 3.5~~
10 ~~(commencing with Section 6250) of Division 7 of Title 1 of the~~
11 ~~Government Code) and Section 1043 of the Evidence Code.~~

12 ~~(1) Management of the peace officer's or custodial officer's~~
13 ~~employing agency shall have access to the files described in this~~
14 ~~subdivision.~~

15 ~~(2) Management of the peace officer's or custodial officer's~~
16 ~~employing agency shall not use the complaints contained in these~~
17 ~~separate files for punitive or promotional purposes except as~~
18 ~~permitted by subdivision (f) of Section 3304 of the Government~~
19 ~~Code.~~

20 ~~(3) Management of the peace officer's or custodial officer's~~
21 ~~employing agency may identify any officer who is subject to the~~
22 ~~complaints maintained in these files which require counseling or~~
23 ~~additional training. However, if a complaint is removed from the~~
24 ~~officer's personnel file, any reference in the personnel file to the~~
25 ~~complaint or to a separate file shall be deleted.~~

26 ~~(d) As used in this section, the following definitions apply:~~

27 ~~(1) "General personnel file" means the file maintained by the~~
28 ~~agency containing the primary records specific to each peace~~
29 ~~officer's or custodial officer's employment, including evaluations,~~
30 ~~assignments, status changes, and imposed discipline.~~

31 ~~(2) "Unfounded" means that the investigation clearly established~~
32 ~~that the allegation is not true.~~

33 ~~(3) "Exonerated" means that the investigation clearly established~~
34 ~~that the actions of the peace officer or custodial officer that formed~~
35 ~~the basis for the complaint are not violations of law or department~~
36 ~~policy.~~